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Dear Dan

STATUTORY CONSULTATION ON THE FUTURE OF THE BAT

We welcome the opportunity to respond to Ofgem's statutory consultation on the future of the Ban on Acquisition only Tariffs (BAT). We understand that the scope of this consultation is limited to Ofgem's minded to position to bring forward the removal of the BAT by 6 months. However, in commenting on this minded to position we also address the wider policy question of whether the BAT should be removed at all, and whether Ofgem has correctly assessed the net benefits of BAT removal.

Our answers to the consultation questions are in Annex 1. In summary, we disagree with Ofgem's previous decision to remove the BAT from April 2025, and for similar reasons we disagree with Ofgem's proposal to bring forward the end date to October 2024:

1. The BAT has a crucial role in promoting fairness in retail markets. This is particularly important as less-engaged customers are often those who are time-poor and highly exposed to the cost of living crisis. Removing the BAT is likely to exacerbate the perceived lack of fairness, reducing consumer trust in the market at a time when engagement is needed. Ofgem says it expects the negative impacts on vulnerable and protected groups to be relatively small. However, the statutory consultation does not include consideration of the impact of BAT removal on customers who are in debt. Consumers in debt and arrears are less likely to be able to engage in the market and switch supplier and many of these customers are in vulnerable circumstances. Ofgem should publish any distributional analysis it has carried out.
2. The BAT also has an important role in maintaining stability in retail markets and its removal may reduce market resilience. Ofgem's assessment seems predicated on an assumption that we no longer face destabilising wholesale price volatility. This is inherently uncertain, and given this uncertainty we consider that the BAT should be retained on a precautionary basis. Furthermore, the judgements set out in the statutory consultation rely on a narrow interpretation of Ofgem's modelling. As with all such modelling, this analysis has limitations and so should be used to inform rather

than determine key decisions. This analysis relies on the unsupported assumption that all competitive tariffs are “priced at sustainable and profitable levels” (para 2.19). On this basis, Ofgem concludes that “removing BAT is not expected to materially increase financial stability risks.” Ofgem assumes in the premise of its analysis a statement which is equivalent to its conclusion. This is circular reasoning and a fundamental flaw in Ofgem’s assessment.

3. Removal of the BAT will add unnecessary costs into the retail market and increase average prices to consumers. Compared to a situation where the BAT remains in place, widespread use of acquisition-only tariffs will result in fewer internal switches (ie switching tariff but not supplier) and a greater volume of external switches, typically mediated by Price Comparison Websites (PCWs) or Third Party Intermediaries (TPIs) for a fee. The increased proportion of external switches will mean higher costs in PCW and TPI fees for the same overall volume of switching. This will represent an inefficiency or deadweight loss for the overall system, the cost of which will need to be recovered from customers. Furthermore, removal of the BAT will allow PCWs and TPIs to negotiate exclusive tariffs, which harm price transparency and may not be aligned with consumer interests.
4. Ofgem notes that removing the BAT on 1 October would be at a time of seasonal hedging risks (associated with increased energy use in winter and uncertain customer behaviour), and that there may be cumulative impacts. On balance, Ofgem assumes that the associated costs to suppliers would be small relative to the modelled consumer cost benefits of removing the BAT six months earlier. However these modelled benefits are based on uncertain assumptions, while the hedging volume risks to suppliers are both real and potentially material. In accordance with the price cap methodology, suppliers are expected to hedge from mid-May 2024 for the price cap period commencing 1 October 2024. On that basis, Ofgem considers publication of the minded-to position on 14 May allows enough time for suppliers to suitably reflect the impact of acquisition-only pricing from 1 October in their hedging. However, a published minded-to position is a consultation. As Ofgem’s position is contrary to the views of consumer representatives, politicians and the public, this may carry less weight when compared to a less controversial position.
5. As noted in Ofgem’s recent discussion paper on the future of price protection, the BAT could replace the current price cap or supplement future price protection options. While this is being assessed it would be appropriate to keep the BAT. Competition has started to take off in recent months and allowing the BAT to remain until 31 March 2025 would provide a wider observation window, helping Ofgem’s work on future price protection.
6. Finally, we would note that since this statutory consultation was issued, a General Election has been called for July of this year. With new government priorities now likely to be in place before 1 October, Ofgem’s proposed timing for removal of the BAT has become less favourable.

Yours sincerely,



Richard Sweet
Director of Regulatory Policy

**STATUTORY CONSULTATION ON THE FUTURE OF THE BAN ON
ACQUISITION-ONLY TARIFFS (“BAT”) - SCOTTISHPOWER RESPONSE**

1) Do you agree with our minded-to position that Ofgem should modify supply standard licence condition SLC 22B to remove the BAT from 1 October 2024?

We do not agree with Ofgem’s minded-to position to modify supply standard licence condition SLC 22B to remove the BAT from 1 October 2024. As we highlight in our response to questions 3 and 4, this minded-to position relies on a flawed approach to assessment. The BAT is in consumer interests as it promotes market stability. There is no reason to be confident that recent, relatively benign, wholesale prices will persist, or that the assumptions underlying Ofgem’s modelling will hold.

The timing of the BAT removal is of concern as future price protections are currently under review, and the Market Stabilisation Charge has only recently lapsed. It would be good practice to retain the BAT until decisions have been made on future price protections - this would facilitate consideration of a wider range of approaches to address the loyalty penalty.

Since this statutory consultation was issued, an election has been called for July of this year. The leader of the opposition, Keir Starmer, recently reiterated the party’s “missions” if it forms the next government, which include the pledge to remove fossil fuels from Britain’s electricity generation by 2030. This would be an ambitious new target, and if implemented, will present a challenge for Ofgem to facilitate faster rollout of flexibility, while also protecting consumers from excess costs and maintaining market confidence. With new government priorities, and areas of focus, now likely to be in place before 1 October, Ofgem’s proposed timing for removal of the BAT has become more problematic. The BAT promotes longer-term relationships with suppliers, which are important in giving customers the confidence to engage with smart solutions. This empowers consumers to engage in the smart and flexible energy system of the future.¹

It is also concerning that Ofgem’s statutory consultation does not indicate that the implications of removal of the BAT have been considered for consumers who are already in debt, and so less able to switch to a new supplier.² On this, we note that in response to Ofgem’s policy consultation Citizens Advice disagreed that it would be appropriate or beneficial to remove the BAT and has highlighted its role in allowing the growing numbers of consumers in debt to access lower tariff costs.³

Furthermore, retention of the BAT is in line with Ofgem’s Consumer Interests Framework, particularly the pillars of resilience and fair prices:

Resilience

- The BAT provides retail energy markets with resilience to market shocks by reducing the risk of large and unpredictable movements in the number of customers on SVT when wholesale prices are volatile. This future volatility depends on weather and wider geopolitical developments and cannot be taken for granted. There are “unknown unknowns”. Ofgem’s position that the BAT has “fulfilled the role it was introduced for”

¹ See for example, [Putting consumers first: empowering and protecting energy consumers - GOV.UK](https://www.gov.uk/government/news/putting-consumers-first-empowering-and-protecting-energy-consumers) (www.gov.uk)

² The Debt Assignment process allows prepayment meter customers with £500 or less debt per fuel to switch with their debt transferring too.

³ [BAT Consultation Response \(citizensadvice.org.uk\)](https://citizensadvice.org.uk/bat-consultation-response)

seems based on an assumption that we will no longer face destabilising high or volatile wholesale prices that jeopardise the stability of retail markets.

- Risk reduction due to the presence of the BAT has supported investment in the retail energy sector, which has been beneficial for longer-term resilience. Removing the BAT on 1 October this year, may increase perceived regulatory risk, at a time when investment is needed to unlock household flexibility.
- Removing the BAT on 1 October would be at a time of seasonal hedging risks, which will exacerbate impacts on suppliers. Ofgem assumes that the real associated costs to suppliers would be small relative to its modelled consumer cost benefits of removing the BAT six months earlier than planned (para 2.33). However, this is not comparing like with like. The costs to suppliers may be significant and will accrue in the coming winter. As discussed in our response to Question 3 and 4, the benefit to consumers is uncertain.⁴
- Suppliers that hedge in accordance with the published price cap methodology are expected to hedge from mid-May 2024 for the price cap period commencing 1 October 2024. On that basis, Ofgem consider that the publication of the minded-to position on 14 May allows enough time for suppliers to adjust their hedging in time for the markets to suitably reflect acquisition-only pricing from 1 October. However a minded-to position is a consultation and not a Decision made by the Authority. Given that Ofgem's minded-to position on the BAT goes firmly against the views of most stakeholders, including consumer representatives such as Citizens Advice, politicians and the public,⁵ it would not be surprising if it was to be challenged, and it would have less weight when compared to an uncontroversial decision or one with robust evidence in its favour.

Fair prices

- The BAT currently minimises consumer welfare risks by ensuring that highly engaged (and generally wealthier) consumers are not cross-subsidised by households who are not in a position to seek out loss-leading deals with other suppliers. These less-engaged customers are often both time-poor and highly exposed to the cost of living crisis.
- Ofgem “*expect any negative impacts on vulnerable and protected groups (whether through any costs of supplier failure or any increase in prices within the overarching protection of the price cap) to be relatively small*” (para 2.18). However, Ofgem's consultation does not include consideration of the impact of BAT removal on customers who are already in debt. As noted in Ofgem's recent consultation on Affordability and Debt, consumers in debt and arrears are unlikely to be able to engage in the market and switch supplier.⁶ Many of these customers are in vulnerable circumstances.
- Ofgem should publish any distributional analysis it has carried out, noting that its published Impact Assessment Guidance states that Ofgem will aim to assess, as appropriate, the impact of policies on different groups of consumers, particularly those that are in vulnerable circumstances.⁷

⁴ Uncertainty is inherent in analysis and in any significant real-world decision. The implications of this for decision making are considered in [The Aqua Book: guidance on producing quality analysis for government \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁵ See the results of a recent survey from SO Energy: [Industry reacts to Ofgem extending the ban on acquisition-tariffs \(current-news.co.uk\)](https://current-news.co.uk)

⁶ [Affordability and debt in the domestic retail market \(ofgem.gov.uk\)](https://ofgem.gov.uk)

⁷ [IA guidance structure - Draft v2 \(ofgem.gov.uk\)](https://ofgem.gov.uk)

2) If you consider that the BAT should remain in force until 31 March 2025, do you think the market wide derogation from SLC 22B for fixed retention tariffs should also continue until 31 March 2025?

We agree with Ofgem that there is no change to the original reasons for the market wide derogation, and so it should continue for the duration of SLC 22B. Our concern regarding the removal of the BAT is that existing customers may then face a perceived loyalty penalty. Retention tariffs are valuable in developing longer term supplier-customer relationships.

The price cap was motivated in part over concerns about the perceived loyalty penalty in the market. Offering low prices to existing customers could be seen as a reward for their loyalty.

3) Do you have any comments on the analysis presented in section 2?

As noted in our response to question 4, the analysis relies on assumptions:

- that all competitive tariffs are “priced at sustainable and profitable levels”⁸, and
- where gaining suppliers have competitive advantages, “this can improve overall market efficiency”.

These assumptions are a fundamental limitation on the value of the analysis and mean that the projected outcomes should be considered with caution. There is inherent uncertainty about both the immediate effects of BAT removal and about its longer-term consequences. This is especially of concern as the context is changing with the move to a smarter, more flexible system and the potential of a change of government following the election on 4 July this year.

Ofgem’s analysis was focussed on short-term effects during a single price cap period. The BAT has been in place for a relatively short period, during a time when our energy system has faced the biggest challenges that have been seen in living memory. The analysis is based on low consumer engagement in terms of absolute numbers, driven by reasons other than the BAT.

Ofgem states that it is “*not seeing any particular benefit in terms of tariff offerings for loyal customers now and during the BAT period*” (para 2.39), however this has been a time of lower-quartile benchmarking for operating costs, which has left little scope for suppliers to offer benefits to loyal customers during the BAT period. Ofgem’s analysis is based on “Consumer Impacts of the Market Survey data from 2022-2024”, a time when suppliers were largely making losses. This did not facilitate investment and innovation in retail markets.

Allowing the BAT to remain in place until 31 March 2025 would provide a wider observation window, which may be useful to Ofgem’s work on future price protection options. As noted in Ofgem’s recent discussion paper on the future of price protection,⁹ the BAT could replace the current price cap or be used to supplement future price protection options. While this is under consideration it would be appropriate to keep the BAT in place until the future price protection options have been narrowed down.

All analysis used to inform regulatory decisions is necessarily subject to uncertainties in the evidence, data and assumptions used and how they are combined. Information on the overall uncertainty is needed to inform choices between options. Regulatory decisions are made considering a complex system and limited available information, however there is still time to

⁸ What is considered “sustainable and profitable” for an acquisition only tariff may look different to that for a default tariff. This can be expected to result in price discrimination across the market with an effective cross-subsidy of those who are able to, and choose to, switch suppliers.

⁹ [Future Price Protection Discussion Paper | Ofgem](#)

gather more information for the work on future price protection by allowing the BAT to remain in place until 31 March 2025.

4) Do you have any comments on the draft impact assessment presented in section 3?

General comments

Ofgem's overall assessment relies on an assumption that *"all competitive tariffs are priced at sustainable and profitable levels"*, although it is acknowledged that in theory acquisition tariffs *"could be below reasonably efficient levels, and come at a cost to financial stability"*. With increasing complexity in the energy system and market entrants potentially having a range of commercial interests beyond the sector, this assumption is surprising.

Acquisition-only tariffs may well be below average costs to serve a customer with a given set of characteristics but yet allow marginal costs to be recovered. In effect, customers who do not switch would cover an increased share of overall system costs and so pay more. The conceptual framework for Ofgem's analytical work on the BAT prevents this from being explored by simply assuming that acquisition tariffs are sustainable and profitable. In reality, removal of the BAT enables the return of the "tease and squeeze" approach. To remain competitive, financially responsible suppliers would need adjust their own strategies to reflect this. The Financial Responsibility Principle and the new rules on financial responsibility may maintain stability but have not yet been put to the test. Note that there may also be interactions between the removal of the BAT and the ability of suppliers to meet the capital adequacy requirements.

These assumptions of sustainable pricing of acquisition tariffs and improvements to overall efficiency are a significant limitation in Ofgem's assessment, to the point that the impact assessment as a whole should be considered with caution. The assessment that removal of the BAT on 1 October 2024 will lead to consumer benefits should not be simply determined by this modelling but should rely on qualitative, principles-based assessment.

If Ofgem has not already done so, it would be sensible to bring this question to its Academic Panel,¹⁰ to enhance the strategic thinking and policy development in this area. The published outline of the impact assessment does not provide sufficient detail and, given its limitations, cannot present *"a strong argument for the BAT's removal"* as Ofgem concludes.

Ofgem states that it does "not see evidence that previously disengaged customers are more likely to switch with the BAT now in place" (para 2.40). Making disengaged customers more likely to switch to a new supplier is not how the BAT improves market stability and fairness. Switching should also not be treated an objective in itself, rather than one useful metric of many. Switching has also begun to take off in recent months, with the latest figures for April 2024 showing a 45% year-on-year increase.¹¹ Note that a recent government policy paper concluded that while barriers to switching should be kept low, "consumers should be able to have longer term – and mutually beneficial – relationships with their energy suppliers."¹² This reflects the fact that value for consumers goes beyond an ability to access the latest short-term cut-price deal.

¹⁰ [Ofgem's academic panel | Ofgem](#)

¹¹ [Switching in April rockets to highest level since October 2021 - ElectraLink](#)

¹² [Delivering a better energy retail market: a vision for the future and package of targeted reforms \(HTML\) - GOV.UK \(www.gov.uk\)](#)

The BAT and market-wide stability

It is often said that all models are wrong but some are useful. As we have highlighted, the assumptions behind Ofgem's modelling of the BAT arguably mean that it is not useful in assessing the implications of early removal of the BAT for market-wide stability. Using the modelling, Ofgem judges that *"the BAT never has more than approximately a one percentage point effect on supplier EBIT"* (para 3.4). Ofgem states that it sees no evidence that losses in the modelled scenarios where the BAT has been removed in themselves present a stability risk. However the results of this limited modelling work should be considered as only indicative and do not mean that removal of the BAT does not present a stability risk.

Ofgem also states that *"the removal of the MSC demonstrates that [market-wide stability] is a lot less relevant"* (para 3.4). However, the purpose of both the BAT and the MSC was to maintain the resilience of the GB energy sector and provide consumer protection against the risk of sustained price shocks and resulting consumer detriment. In the absence of the MSC mitigating these risks, the BAT has more importance, not less. Ofgem notes that the *"falling (and less volatile) pricing environment, and the removal of the MSC as an additional cost per switcher, also reduces friction and risk for suppliers in coming months"*. We cannot know that the wholesale pricing environment will be less volatile and the removal of the MSC can increase risk for suppliers.

Ofgem also implicitly assumes *"ongoing wholesale price falls"*, (eg para 3.18) which is surprising as at the time of writing the wholesale forward curves reflect an expectation of higher prices in winter 2024. Prices will be affected by weather patterns and also by any geopolitical instability. There is inherent uncertainty regarding the trajectory of wholesale prices and Ofgem should not assume that markets are now stable. Prices may spike again and may fall again.

Fairness – distributional effects

The lack of assessment of the distributional considerations of the removal of the BAT is most concerning. As noted in Ofgem's recent consultation on Affordability and Debt, consumers in debt and arrears are unlikely to be able to engage in the market and switch supplier. This means that one of the key impacts of the BAT removal is that customers who are in debt will be less able to access the cheapest tariffs on the market.¹³ While the price cap is undoubtedly a mitigation here, the level of disbenefit may still be significant. If Ofgem has quantified this, the distributional analysis should be shared with stakeholders. Note that any distribution analysis cannot plausibly start from an assumption that no price discrimination will take place following removal of the BAT.

The published Impact Assessment Guidance notes that Ofgem will aim to assess, as appropriate, the impact of policies on different groups of consumers, particularly those that are in vulnerable circumstances and that the analysis will use two broad approaches – impact on consumers' energy spend and disposable income and impact based on consumer archetypes.¹⁴ The guidance also states that Ofgem will, where appropriate, apply distributional weights to the results. This reflects the economic principle of decreasing marginal utility of income, ie an additional pound of income for a low-income recipient is worth more. Given that the removal of the BAT will largely benefit more engaged (and generally wealthier) customers, and negatively affect those who are not in a position to switch, it would be appropriate to apply distributional weights to the results of the BAT analysis.

¹³ Noting that PPM customers with less than £500 debt per fuel can still switch, as per the Debt Assignment Protocol

¹⁴ Para 53 [IA guidance structure - Draft v2 \(ofgem.gov.uk\)](#)

Ofgem argues that removal of the BAT could benefit engaged and disengaged customers alike – by providing a route for cheaper acquisition tariffs without penalising existing customers. Ofgem states that it is possible for suppliers to attract new customers with cheaper deals without necessarily increasing costs for disengaged customers (para 3.16). Although Ofgem’s scenarios consider the additional costs to suppliers that lose customers from unwound hedges, it is not clear whether this considers the general increase in system costs due to more volume risk, which must be recovered. The current price cap framework caps tariffs at a level that is in line with the recovery of suppliers’ efficient costs. If suppliers offer acquisition tariffs that are below this, to attract new customers, it benefits those customers however, the costs of remaining in business must still be recovered from the customer base. Strong competition between suppliers for customer switching will benefit active customers but can mean disbenefits for those who are not engaged. These include the costs of increased volume risk faced by suppliers.

Impact on consumer trust

The transition to a renewables dominated grid necessitates wide ranging reforms to how the energy market functions; in particular, we need to enable greater flexibility to reduce overall costs and deliver an efficient system. For domestic consumers, this relies on them having trust and confidence in the market. This is challenging to capture through modelling work. A return to exclusive tariffs on PCWs that are not available to all consumers, is unlikely to facilitate this, and does not represent an improvement in transparency and may foster a level of frustration or distrust for consumers who understand that they must change supplier in order to access cross-subsidised deals. This may deter engagement with products and services that deliver the flexibility needed to reach net zero.

Consumer trust is particularly important as we work to deliver smart solutions and the responsive retail market of the future. The BAT promotes trust in the markets, which is crucial in giving customers the confidence to engage and build a trusted relationship with their suppliers. This is particularly important as less-engaged customers are often those who are time-poor and highly exposed to the cost of living crisis. We agree with Ofgem that the BAT could increase consumer trust in the market, on the basis that customers know they could access any offer from their supplier that is also available to new customers.

TPIs and PCWs have a strong commercial interest in driving more switching of supplier through a return to teaser acquisition tariffs. The tariffs they negotiate are not generally available to all consumers and arguably reduce transparency. More consumer money going to PCWs and TPIs is not likely to be in consumer interests, as when the system as a whole is considered this reflects an inefficiency or deadweight loss. The BAT reduces the ability of PCWs and TPIs to negotiate exclusive tariffs, which harm price transparency and may not be aligned with consumer interests.¹⁵

ScottishPower

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¹⁵ [Third-party intermediaries in the retail energy market: summary of responses \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/123456/Third-party_intermediaries_in_the_retail_energy_market_summary_of_responses.pdf)